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13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 ROBBY HARPER on behalf of himself and all
16 others similarly situated,

17 Plaintiff,

18 v.

19 BOAR'S HEAD PROVISIONS CO., INC. and
20 DOES 1 through 200, inclusive,

21 Defendants.

No.

CLASS ACTION COMPLAINT

CLASS ACTION

JURY TRIAL DEMAND

22
23
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27
CLASS ACTION COMPLAINT

1 Plaintiff, Robby Harper files this class action complaint against Defendant, Boar's
2 Head Provisions Co., Inc, and alleges:

3 **JURISDICTION**

4 1. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28
5 U.S.C. 1332(d) in that: (1) this is a class action with more than one hundred (100) Class Members;
6 (2) Plaintiff is a citizen of California, and Defendant is a citizen of both Delaware and Florida
7 and (3) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
8 and costs.

9 2. This Court has personal jurisdiction over Defendant because Defendant conducts
10 and transacts business in the State of California, contracts to supply goods, within the State of
11 California and supplies goods within the State of California.

12 **VENUE**

13 3. Venue in this Court is proper pursuant to 28 U.S.C. section 1391 because
14 Defendant does sufficient business in this District to subject it to personal jurisdiction and also
15 because a substantial part of the events or omissions giving rise to the claim occurred in this
16 District— Plaintiff Robby Harper and many Class Members reside in the Eastern District of
17 California.

18 **PARTIES**

19 **Plaintiff**

20 4. Plaintiff Robby Harper is a citizen of Weaverville, CA. In June of 2024, Mr.
21 Harper purchased multiple Boar's Head meat sandwiches from his local Holiday Markets in
22 Weaverville, CA and Redding, CA, including at least one that contained Beef Salami which is
23 one of Defendant's Products (as defined in Paragraph 8, below) that may have contained *Listeria*
24 *monocytogenes*. Mr. Harper became ill as a result of consuming the Products.

25 **Defendant**

26 5. Defendant, Boar's Head Provisions Co. Inc. ("Boar's Head"), is a Delaware
27 corporation with its principal place of business in Sarasota, Florida. Defendant manufactures,

markets, advertises, and distributes the Products throughout the United States. Defendant created and/or authorized the false, misleading, and deceptive advertisements, packaging, and labeling of its Products.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 100, inclusive, (“Doe Defendants”) and therefore sues these Doe Defendants by fictitious names. Plaintiff will amend his Complaint to allege the true names and capacities of these fictitiously named Doe Defendants when they are ascertained. Each of the fictitiously named Doe Defendants is responsible for the conduct alleged in this Complaint and Plaintiff’s damages were actually and proximately caused by the conduct of the fictitiously named Doe Defendants. Doe Defendants are referred to co-extensively with Defendant Boar’s Head.

7. Plaintiff is informed and believes, and on that basis alleges, that each of these Doe Defendants was the agent, joint venturer, and/or employee of Defendant and/or the Doe Defendants, and in doing the things alleged, were acting within the course and scope of the agency, joint venture, and employment with the advance knowledge, acquiescence, or subsequent ratification of Defendant and each and every other Doe Defendant.

FACTUAL ALLEGATIONS

8. This action seeks to remedy the deceptive and misleading business practices of Defendant Boar’s Head with respect to the manufacturing, marketing, and sale of Boar’s Head Brand Products throughout California and the United States. The products at issue in this case (the “Products”) are those listed in the chart below and purchased prior to July 31, 2024:

Bacon	Canadian Style Uncured Bacon
Bacon	Steakhouse Roasted Slab Bacon
Bologna	Pork & Beef Bologna
Bologna	33% Lower Sodium Bologna
Bologna	Beef Bologna

1	Bologna	Beef Salami
2	Bologna	Garlic Bologna
3	Bologna	Head Cheese
4	Bologna	Strassburger Brand Liverwurst
5	Bologna	Liverwurst Pate
6	Bologna	Olive Terrine Loaf
7	Bologna	Pickle & Pepper Terrine Loaf
8	Bologna	Spiced Ham
9	Frankfurters	Uncured Pork & Beef Frankfurters
10	Frankfurters	Uncured Pork & Beef Frankfurters - Natural Casing
11	Frankfurters	Uncured Beef Frankfurters
12	Frankfurters	Uncured Beef Frankfurters- Natural Casing
13	Frankfurters	Uncured Cocktail Frankfurters
14	Frankfurters	Uncured Beef Knockwurst
15	Ham	All Natural Applewood Smoked Uncured Ham
16	Ham	All Natural Traditional Uncured Ham
17	Ham	Bourbon Ridge Uncured Smoked Ham
18	Ham	Brown Sugar & Spice Off the Bone Ham
19	Ham	Gourmet Pepper Brand Ham
20	Ham	Hickory Smoked Roast Uncured Ham
21	Ham	Italian Cappy Ham
22	Ham	Hot Italian Cappy Style Ham
23	Ham	Extra Hot Italian Cappy Style Ham
24		
25		
26		
27		

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1	Ham	Maple Glazed Roast Pork Loin
2	Ham	Peppenero Garlic Ham
3	Ham	Porchetta Roasted Seasoned Pork (Foodservice)
4	Ham	Roasted Pork
5	Ham	Rosemary & Sundried Tomato Ham
6	Ham	SmokeMaster Beechwood Smoked Ham
7	Ham	Sweet Slice Smoked Uncured Ham
8	Ham	Tavern Ham
9	Ham	Virginia Ham
10	Sausage	Bratwurst
11	Sausage	Hot Smoked Uncured Sausage
12	Sausage	Uncured Kielbasa
13	Sausage	All Natural Chicken Sausage - Smoked Andouille
14	Old Country Brand	Old Country Brand All Nat Uncured Smoked Ham
15	Old Country Brand	Old Country Brand All Natural Uncured Ham
16	Old Country Brand	Old Country Brand Beechwood Smoked Ham
17	Old Country Brand	Old Country Brand Bourbon Ridge Smoked Ham
18	Old Country Brand	Old Country Brand Brown Sugar & Spice Delight Off the Bone Ham
19	Old Country Brand	Old Country Brand Cappy Brand Ham
20	Old Country Brand	Old Country Brand Gourmet Pepper Ham
21	Old Country Brand	Old Country Brand Habanero Ham
22	Old Country Brand	Old Country Brand Rosemary Tomato Ham
23	Old Country Brand	Old Country Brand Black Forest Ham

CLASS ACTION COMPLAINT

1	Old Country Brand	Old Country Brand Canadian Style Bacon
2	Old Country Brand	Old Country Brand Cappy Ham
3	Old Country Brand	Old Country Brand Hot Butt Cappy Ham
4	Old Country Brand	Old Country Brand Seasoned Fresh Ham
5	Old Country Brand	Old Country Brand Sweet Slice Smoked Ham
6	Old Country Brand	Old Country Brand Tavern Ham

8
9 9. All of the Products have been recalled by Defendant.¹

10 10. Defendant has improperly, deceptively, and misleadingly labeled and marketed
11 its Products to reasonable consumers, like Plaintiff, by omitting and not disclosing to consumers
12 on its packaging that the Products are contaminated with *Listeria monocytogenes*.²

13 11. *Listeria monocytogenes* can lead to serious and life-threatening adverse health
14 consequences. The risk of serious infection is particularly concerning for pregnant mothers,
15 infants, the elderly, and immunocompromised individuals, who are highly susceptible to severe
16 infection and even death from *Listeria monocytogenes*.³

17 12. *Listeria monocytogenes* is responsible for causing the infection Listeria.
18 Foodborne listeriosis is recognized to be one of the most dangerous and life-threatening
19 foodborne diseases. High-risk groups for Listeria include pregnant women, infants, elderly, and
20 immune compromised individuals, who have an elevated risk of developing severe symptoms,
21 including death (the mortality rate is 20%-30%), making this bacteria a significant public health
22 concern.

23 ¹ See <https://boarshead.com/pages/product-recall-full-product-list>.

24 ² *Listeria monocytogenes* is an organism which can cause serious and sometimes fatal
25 infections in young children, frail or elderly people, and others with weakened immune
26 systems. Although healthy individuals may suffer only short-term symptoms such as high
27 fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, listeria infection can
cause miscarriages and stillbirths among pregnant women. See
<https://www.cnn.com/2024/07/30/health/boars-head-recall-listeria/index.html>.

³ <http://www.who.int/news-room/fact-sheets/detail/listeriosis>.

1 13. Consumers such as Plaintiff trust manufacturers such as Defendant to sell
2 products that are safe and free from known harmful substances, including *Listeria*
3 *monocytogenes*.

4 14. Plaintiff and those similarly situated (“Class Members”) certainly expect that the
5 meat products they purchase will not contain, or risk containing, any knowingly harmful
6 substances that cause severe disease and even be life threatening.

7 15. Unfortunately for consumers, like Plaintiff, the meat Products they purchased
8 contain *Listeria monocytogenes*.

9 16. Defendant was using a marketing and advertising campaign that omitted from the
10 packaging that the Products contain *Listeria monocytogenes*. The presence of *Listeria*
11 *monocytogenes* is material to reasonable consumers. The presence of *Listeria monocytogenes*
12 was solely within the possession of Defendant, and consumers could only obtain such
13 information by sending the Products off to a laboratory for extensive testing. This omission led
14 reasonable consumers to believe they were not purchasing a product with a known bacterium
15 when in fact they are purchasing a product contaminated with *Listeria monocytogenes*.

16 17. *Listeria monocytogenes* is a species of pathogenic (disease-causing) bacteria, that
17 causes the disease Listeria. It is able to survive and even grow under refrigeration and other food
18 preservation measures, making it a resilient and dangerous bacteria.⁴ As a matter of fact, the
19 bacteria is also able to survive freezing, such as the similar storage temperature of Defendant’s
20 meat products.⁵

21 18. Furthermore, the types of infection issues *Listeria monocytogenes* can cause
22 include but is not limited to sepsis, meningitis, encephalitis, spontaneous abortion, or fever and
23 even a healthy adult is susceptible to infection issues including gastroenteritis.⁶ Moreover,
24 infection causes a 95% hospitalization rate and has a high case fatality rate of 20%, making

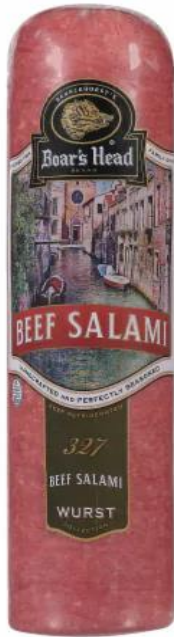
25 ⁴ <https://www.fda.gov/food/foodborne-pathogens/listeria-listeriosis>.

26 ⁵ <https://www.mayoclinic.org/diseases-conditions/listeria-infection/symptoms-causes/syc-20355269>.

27 ⁶ <https://www.ncbi.nlm.nih.gov/books/NBK534838>.

Listeria monocytogenes infection quite dangerous.⁷ In addition, studies have concluded that Listeriosis is associated with high early post-recovery mortality, further exacerbating the danger and difficulty of treating the infection even with early recovery.⁸

19. A representative example of Defendant's lack of disclosure on the Products is depicted below:



20. Consumers such as Plaintiff trust manufacturers such as Defendant to sell products that are safe and free from harmful known substances, including *Listeria monocytogenes*.

21. Plaintiff and Class Members certainly expect that the food products they purchase will not contain, or risk containing, any knowingly harmful substances that cause disease.

22. Unfortunately for consumers, like Plaintiff, the food Products they purchased contained, or were at risk of containing, *Listeria monocytogenes*.

23. Defendant's own recall and other testing confirmed and demonstrated the presence

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5736668/>

⁸ <https://link.springer.com/article/10.1007/s15010-022-01872-1>

1 of *Listeria monocytogenes* in the Plaintiff's product.

2 **Defendant's Recall is Insufficient**

3 24. Defendant issued a recall of its Products on July 25, 2024.⁹

4 25. To be eligible for a refund, a consumer must retain the Products. However,
5 Defendant stated that, "**Consumers are advised to discard any recalled products listed below**
6 **or return them to the store where purchased for a full refund.**"¹⁰ This recall was deliberately
7 designed to preclude the vast majority of consumers from receiving a refund. Plaintiff did not
8 receive a refund because they did not retain the dangerous Products.

9 26. Defendant is aware that any consumer who was made aware of the recall would
10 be predisposed to throwing the Products away.

11 27. Accordingly, Defendant's recall was designed to reach very few people and
12 designed to benefit very few of the consumers who purchased the Products.

13 28. The class action remedy is superior to Defendant's insufficient recall.

14 29. Defendant used a marketing and advertising campaign that omitted from the
15 packaging that the Products contain *Listeria monocytogenes*. This omission led reasonable
16 consumers to believe they were not purchasing a product that contains *Listeria monocytogenes*
17 when in fact they are purchasing a product contaminated with *Listeria monocytogenes*.

18 30. Defendant's marketing and advertising campaign was included in the one place
19 that every consumer looks when purchasing a product –the packaging and labels themselves. As
20 such, a reasonable consumer reviewing Defendant's labels would reasonably believe that they
21 were purchasing products that were safe for oral ingestion and that did not contain any harmful
22 ingredients. Indeed, consumers expected the packaging and labels to accurately disclose the
23 presence of such bacteria within the Products. Thus, reasonable consumers did not think that
24 Defendant was omitting that the Products contained, or risked containing, *Listeria*
25 *monocytogenes*.

26 _____
27 ⁹ <https://boarshead.com/pages/2024-07-30-july-2024-product-recall>.

¹⁰ <https://boarshead.com/recall>.

1 31. Defendant's advertising and marketing campaign was false, deceptive, and
2 misleading because the Products did in fact contain, or risked containing, *Listeria*
3 *monocytogenes*, which is dangerous to one's health and well-being. Nevertheless, Defendant did
4 not list or mention *Listeria monocytogenes* anywhere on the Products' packaging or labeling.

5 32. Defendant's misrepresentations and omissions of the safety of the Products and
6 what was in the Products was material to Plaintiff and Class Members. Consequently, Plaintiff
7 and Class Members lost the entire benefit of their bargain when what they received was a food
8 product contaminated with *Listeria monocytogenes* that is harmful to consumers' health.

9 33. That is because Defendant's Products contained, or were at risk of containing
10 *Listeria monocytogenes*, the Products had no value, or at the very least, Defendant charged
11 significantly more for the Products than they would have been able to had they not omitted the
12 fact that the Products contained—or possibly contained—*Listeria monocytogenes*.

13 34. As set forth below, food products which contain or possibly contain *Listeria*
14 *monocytogenes*, such as Defendant's Products, are in no way safe for human consumption and
15 are entirely worthless.

16 35. Alternatively, Plaintiff and Class Members paid a price premium for the Products
17 based upon Defendant's marketing and advertising campaign, including false and misleading
18 representations and omission on the Products' labels. Given that Plaintiff and Class Members
19 paid a premium for the Products, Plaintiff and Class Members suffered an injury in the amount
20 of the premium paid.

21 36. Accordingly, Defendant's conduct violated and continues to violate, *inter alia*,
22 numerous California statutes and common law as described below. Defendant also breached and
23 continues to breach its warranties regarding the Products.

24 37. Plaintiff brings this action against Defendant on behalf of himself and Class
25 Members who purchased the Products during the period of time when Defendant allowed the
26 Products to be infected with *Listeria monocytogenes*, specifically from April 26, 2024, 90 days
27 before the July 25, 2024 Recall, to Present (the "Class Period").

FACTUAL BACKGROUND

38. Defendant manufactured, marketed, advertised, and sold food products.

39. Consumers have become increasingly concerned about the effects of ingredients in products that they orally ingest. Companies, such as Defendant, have capitalized on consumers' desire for food products, and indeed, consumers are willing to pay, and have paid, a premium for these products.

40. Consumers lack the meaningful ability to test or independently ascertain or verify whether a product contains unsafe substances, such as *Listeria monocytogenes*, especially at the point of sale, and therefore must, and do, rely on Defendant to truthfully and honestly report what the Products contain, or are at risk of containing, on the Products' packaging or labels.

41. The Products' packaging did not identify *Listeria monocytogenes*. Indeed, *Listeria monocytogenes* was not listed anywhere on the packaging, nor was there any warning about the inclusion (or even potential inclusion) of *Listeria monocytogenes* in the Products. This led reasonable consumers to believe the Products did not contain, and were not at risk of containing, *Listeria monocytogenes*.

42. However, the Products contained, or were at risk of containing, *Listeria monocytogenes*.

43. Defendant was, and is, a large and sophisticated corporation that has been in the business of producing, manufacturing, selling, and distributing food products for many years, including producing and manufacturing the contaminated Products.

44. Defendant was in the unique and superior position of knowing the ingredients and raw materials used in the manufacturing of its Products and possessed unique and superior knowledge regarding the manufacturing process of the Products, the manufacturing process of the ingredients and raw materials the Products contained, and the risks associated with those processes, such as the risk of *Listeria monocytogenes* contamination. Defendant also had the ability to test the Products for *Listeria monocytogenes* contamination prior to releasing the Products into the stream of commerce. Such knowledge is solely within the possession of

1 Defendant.

2 45. Accordingly, Defendant possessed superior knowledge regarding the risks
3 involved in the production and manufacturing of its Products. Such knowledge was not readily
4 available to consumers like Plaintiff and Class Members.

5 46. Defendant had, and continues to have, a duty to provide consumers, like Plaintiff
6 and Class Members, with accurate information about the contents of the Products.

7 47. Therefore, Defendant's false, misleading, and deceptive omissions regarding the
8 Products containing *Listeria monocytogenes* were likely to continue to deceive and mislead
9 reasonable consumers and the public, as they have already deceived and misled Plaintiff and the
10 Class Members.

11 48. Defendant's misrepresentations and omissions were material and intentional
12 because people are concerned with what is in the products that they orally ingest. Consumers
13 such as Plaintiff and the Class Members were influenced by the marketing and advertising
14 campaign, the Products' labels, and the listed ingredients. Defendant knew that if it had not
15 omitted that the Products contained *Listeria monocytogenes*, then Plaintiff and the Class would
16 not have purchased the Products, or, at the very least, would not have paid nearly as much for the
17 Products.

18 49. Consumers in general rely on marketing and information in making purchasing
19 decisions.

20 50. By omitting that the Products included *Listeria monocytogenes* on the labels of
21 the Products throughout the Class Period, Defendant knew that those omissions were material to
22 consumers since they would not purchase a product that contained *Listeria monocytogenes*.

23 51. Defendant's deceptive representations and omissions were material in that a
24 reasonable person would attach importance to such information and would be induced to act upon
25 such information in making purchase decisions.

26 52. Defendant's false, misleading, and deceptive misrepresentations and omissions
27 are likely to continue to deceive and mislead reasonable consumers and the general public, as

they have already deceived and misled Plaintiff and the Class Members.

53. When it made the false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would pay a premium for a product marketed without *Listeria monocytogenes* over comparable products not so marketed.

54. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representation and omission, Defendant injured Plaintiff and the Class Members in that they:

- a. Paid for Products that were not as Defendant represented;
- b. Paid a premium price for Products that were not as Defendant represented;
- c. Were deprived of the benefit of the bargain because the Products they purchased were different from as Defendant warranted;
- d. Were deprived of the benefit of the bargain because the Products they purchased had less value than as Defendant represented; and
- e. Were denied the benefit of the properties of the Products Defendant promised.

55. Had Defendant not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class Members would not have been willing to pay the same amount for the Products they purchased and/or Plaintiff and the Class Members would not have been willing to purchase the Products.

56. Plaintiff and the Class Members paid for Products that do not contain *Listeria monocytogenes*. Since the Products do indeed, or possibly, contain *Listeria monocytogenes*, the Products Plaintiff and the Class Members received were worth less than the Products for which they paid.

57. Plaintiff and the Class Members all paid money for the Products; however, Plaintiff and the Class Members did not obtain the full value of the advertised Products due to Defendant's misrepresentations and omissions. Plaintiff and the Class Members purchased, and/or paid more for, the Products than they would have had they known the truth about the Products. Consequently, Plaintiff and the Class Members have suffered injury in fact and lost

1 money as a result of Defendant's wrongful conduct.

2 58. Plaintiff and Class Members saw the Products' packaging prior to purchasing the
3 Products. Had Plaintiff and Class Members known the truth about the Products, *i.e.*, that they do
4 or possibly contain *Listeria monocytogenes*, they would not have been willing to purchase them
5 at any price, or, at minimum would have paid less for them.

6 59. Plaintiff has purchased and enjoyed Boar's Head products in the past and would
7 like to purchase them in the future if Defendant takes step to ensure that future labelling of its
8 Products is accurate, and the Products are not contaminated in the future.

9 **CLASS ALLEGATIONS**

10 60. Plaintiff brings this matter on behalf of himself and those similarly situated. As
11 detailed at length in this Complaint, Defendant orchestrated deceptive marketing and labeling
12 practices. Defendant's customers were uniformly impacted by and exposed to this misconduct.
13 Accordingly, this action is uniquely situated for class-wide resolution.

14 61. The Class is defined as all consumers who purchased the Products anywhere in
15 the United States during the Class Period.

16 62. Plaintiff also seeks certification, to the extent necessary or appropriate, of a
17 subclass of individuals who purchased the Products in the State of California at any time during
18 the Class Period (the "California Subclass").

19 63. The Class and California Subclass are referred to collectively throughout the
20 Complaint as the Class.

21 64. The Class is properly brought and should be maintained as a class action under
22 Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and
23 adequacy for reasons described below.

24 65. Numerosity: Class Members are so numerous that joinder of all members is
25 impracticable. Plaintiff is informed and believes that there are thousands of consumers in the
26 Class, and in the California Subclass, who have been damaged by Defendant's deceptive and
27 misleading practices.

1 66. Commonality: The questions of law and fact common to the Class Members
2 which predominate over any questions which may affect individual Class Members include, but
3 are not limited to:

4 a. Whether Defendant was responsible for the conduct alleged herein which was
5 uniformly directed at all consumers who purchased the Products;

6 b. Whether Defendant's misconduct set forth in this Complaint demonstrates that
7 Defendant has engaged in unfair, fraudulent, or unlawful business practices with respect to the
8 advertising, marketing, and sale of its Products;

9 c. Whether Defendant made false and/or misleading statements and omissions to the
10 Class and the public concerning the contents of its Products;

11 d. Whether Defendant's false and misleading statements and omissions concerning
12 its Products were likely to deceive the public; and

13 e. Whether Plaintiff and the Class are entitled to money damages under the same
14 causes of action as the other Class Members.

15 67. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the
16 claims of each Class Member in that every member of the Class was susceptible to the same
17 deceptive, misleading conduct and purchased Defendant's Products. Plaintiff is entitled to relief
18 under the same causes of action as the other Class Members.

19 68. Adequacy: Plaintiff is an adequate Class representative because his interests do
20 not conflict with the interests of the Class Members he seeks to represent, his consumer fraud
21 claims are common to all members of the Class, he has a strong interest in vindicating their rights,
22 he has retained counsel competent and experienced in complex class action litigation, and counsel
23 intends to vigorously prosecute this action.

24 69. Predominance: Pursuant to Rule 23(b)(3), common issues of law and fact
25 identified above predominate over any other questions affecting only individual members of the
26 Class. Class issues fully predominate over any individual issues because no inquiry into
27 individual conduct is necessary; all that is required is a narrow focus on Defendant's deceptive

and misleading marketing and labeling practices.

70. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claims, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;

c. When Defendant’s liability has been adjudicated, all Class Members’ claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;

d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;

e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude their maintenance as a class action;

f. This class action will assure uniformity of decisions among Class Members;

g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;

h. Class Members’ interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by a single class action; and

i. It would be desirable to concentrate in this single venue the litigation of all Class Members who were induced by Defendant’s uniform false advertising to purchase its Products.

71. Accordingly, this Class is properly brought and should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

CLAIMS

COUNT I

**Violations of the Unfair Competition Law – Unlawful Prong
Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”)
(On behalf of the California Subclass)**

72. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 71 of this complaint.

73. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

74. The unlawful prong of California Business and Professions Code section 17200 prohibits any unlawful business practices.

75. Defendant is a “business” as defined by section 17200.

76. Defendant’s conduct was unlawful, in violation of the UCL, because Defendant’s conduct described in this complaint constitutes a violation of California’s False Advertising Law and the California Consumers Legal Remedies Act (“CLRA”) (as alleged in this Complaint) and all constitute separate and cumulative violations of the unlawful prong of section 17200.

77. Plaintiff and Class Members have suffered damages in the form of lost money or property, due to the condition of the Products.

78. Plaintiff is authorized to pursue a private right of action against Defendant under section 17204.

79. Plaintiff and Class Members have no adequate remedy at law because of the ongoing uncertainty as to the contamination of the Products and the inadequacy of the Recall.

80. Plaintiff seeks restitution and private as well as public injunctive relief under this section enjoining Defendant from inaccurately describing, labeling, marketing, and promoting the Products.

COUNT II

**Violations of the Unfair Competition Law – Unfair Prong
Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”)
(On behalf of the California Subclass)**

81. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 71 of this complaint.

1 82. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice
2 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

3 83. The unfair prong of California’s Unfair Competition Law prohibits unfair
4 business practices that either offend an established public policy or that are immoral, unethical,
5 oppressive, unscrupulous or substantially injurious to consumers.

6 84. Defendant repeatedly and misleadingly, inaccurately, and deceptively advertised
7 and marketed its Products to consumers—and Defendant continues to do so. These practices
8 offend an established public policy or are immoral, unethical, oppressive, unscrupulous, or
9 substantially injurious to consumers.

10 85. Defendant also acted in an unethical, unscrupulous, outrageous, oppressive, and
11 substantially injurious manner with respect to Plaintiff and the Class Members by engaging in
12 unfair and anticompetitive business practices that harmed consumer welfare. Defendant engaged
13 in unfair business practices and acts in at least the following respects:

- 14
- 15 • Defendant promoted and sold Products with potential contamination, despite
16 knowing that customers do not expect Products to be contaminated;
- 17 • Defendant failed to disclose that the Products contained *Listeria monocytogenes*
18 that could and would cause harm to Plaintiff and the class;
- 19 • Defendant represented through advertising, product packaging, press releases,
20 and other sources that the Products possessed particular qualities that were inconsistent with
21 Defendant’s actual knowledge of the Products;
- 22 • Defendant misrepresented that the Products are safe for use and doesn’t list that
23 the Products contain *Listeria monocytogenes*.

24 86. These are practices and uniform courses of conduct that offend an established
25 public policy or that are immoral, unethical, oppressive, unscrupulous, or substantially injurious
26 to consumers.

27 87. The utility of Defendant’s transmissions and untrue statements are very low (as they

1 are fraudulent and anti-competitive) and are vastly outweighed by the serious harm incurred
2 by Plaintiff and Class Members.

3 88. Any legitimate purpose or benefit of Defendant's conduct is substantially
4 outweighed by the harm to consumers, competition, and the general public. There is no
5 legitimate reason why Defendant should be allowed to sell the Products without providing
6 its customers the opportunity to make fully informed purchases. There is no legitimate reason why
7 Defendant should be allowed to obfuscate or deceive its customers about whether the Products
8 are contaminated with *Listeria monocytogenes*.

9 89. Plaintiff was left with uncertainty as to the best course of action after seeing the
10 deficient Recall. Plaintiff and Class Members had to follow convoluted Recall procedures that
11 were designed to thwart successful claims. Unless the Court enjoins further unlawful acts by
12 Defendant, Plaintiff and Class Members face uncertainty as to which of these choices would
13 allow them to recover anything or minimize their damages. Plaintiff is also unsure whether
14 purchasing further Products or similar products in the future would result in further loss.

15 90. Plaintiff and Class Members have incurred and continue to incur damages that
16 are actual and recognized by statute in the form of unusable Products, and loss of money or
17 property.

18 91. Plaintiff and Class Members have no adequate remedy at law because of the
19 ongoing uncertainty as to the contamination of the Products. Plaintiff intends to purchase the
20 Products or similar products if the requested injunctive relief is granted.

21 92. Plaintiff and Class Members are entitled to and seek restitution and public as
22 well as private injunctive relief under this section.

23 **COUNT III**
24 **Violations of the Unfair Competition Law – Fraudulent Prong**
25 **Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL")**
26 **(On behalf of the California Subclass)**

27 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
through 71 of this complaint.

1 94. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice
2 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

3 95. The fraudulent prong of the UCL prohibits business practices that are likely to
4 deceive the public.

5 96. Defendant’s practice of not disclosing the presence of *Listeria monocytogenes*
6 rendered the Products less valuable, and then misrepresenting the contamination status at the
7 expense of its competitors, is a practice that is likely to deceive members of the public.
8 Defendants’ omissions are likely to deceive members of the public.

9 97. Defendant’s conduct is fraudulent in violation of the UCL because it is likely to
10 deceive a reasonable consumer:

- 11 • Defendant promoted and sold Products with potential contamination, despite
12 knowing that customers do not expect Products to be contaminated;
- 13 • Defendant failed to disclose that the Products contained *Listeria monocytogenes*
14 that could and would cause harm to Plaintiff and the class;
- 15 • Defendant represented through advertising, product packaging, press releases,
16 and other sources that the Products possessed particular qualities that were inconsistent with
17 Defendant’s actual knowledge of the Products;
- 18 • Defendant misrepresented that the Products are safe for use and doesn’t list that
19 the Products contain *Listeria monocytogenes*
20

21 98. Defendant had ample means and opportunities to alert Plaintiff and Class
22 Members of the true nature of its Products, including on in its advertisements of the Products; on
23 the external packaging of the Products; and in its own and its partners’ online purchase portals
24 and storefront displays. Defendant uniformly failed to disclose that the Products contained
25 *Listeria monocytogenes*. Had Defendant disclosed this information, Plaintiff and Class Members
26 would not have purchased the Products, would not have purchased the Products at the prices they
27 did, or would have returned the Products during the respective buyer’s remorse periods.

1 104. Plaintiff incorporates by reference the allegations contained in paragraphs 1
2 through 71 of this complaint.

3 105. Defendant violated Cal. Bus. & Prof. Code section 17500 by using false and
4 misleading statements, and material omissions, to promote the sale of the Products and otherwise
5 “concerning any circumstance or matter of fact connected with the proposed performance or
6 disposition of services.”

7 106. The Products do not possess the level of quality or value that Defendant promised.

8 107. Defendant made uniform representations and material omissions that
9 communicated to Plaintiff and Class Members that the Products were safe to consume and did
10 not contain *Listeria monocytogenes*, when that was not in fact true.

11 108. Had Plaintiff and Class Members known that the Products contained *Listeria*
12 *monocytogenes*, they would not have purchased the Products in the first place.

13 109. Defendant omitted the material fact that the purportedly safe Products contained
14 *Listeria monocytogenes*. Defendant had a duty to disclose the truthful nature of the Products.

15 110. Defendant knew, or in the exercise of reasonable diligence should have
16 known, that its representations and omissions were false and misleading at the time it made
17 them. Defendant deliberately provided false representations and omissions to prevent
18 customers from learning the true nature of the Products and further inducing its customers to
19 purchase new Products.

20 111. Defendant’s false and misleading advertising statements deceived the general
21 public.

22 112. As a direct and proximate result of Defendant’s misleading and false advertising,
23 Plaintiff and Class Members have suffered injury-in-fact and have lost money and property.

24 113. Plaintiff and Class Members reasonably relied to their detriment on
25 Defendant’s material misrepresentations and omissions regarding its Products.

26 114. Plaintiff and Class Members were left with uncertainty as to the best course
27 of action after seeing the insufficient and convoluted Recall. Unless the Court enjoins further

1 unlawful acts by Defendant, Plaintiff and Class Members face uncertainty as to which of these
2 choices would minimize their damage

3 115. Plaintiff and Class Members seek to enjoin, under Bus. & Prof. Code section
4 17535, the violations described herein and to require Defendant to issue appropriate a new
5 Recall.

6 116. Defendant's false advertising will continue to harm consumers unless and until it
7 is enjoined.

8 117. Plaintiff and Class Members therefore seek an order requiring Defendant to cease
9 its false advertising and unlawful practices, provide full restitution of all monies Defendant
10 derived from its false advertising, interest at the highest rate allowable by law, and for an award
11 of reasonable attorney's fees and costs under applicable law, including Code of Civil Procedure
12 section 1021.5.

13 **COUNT V**
14 **Violation of the California Consumers Legal Remedies Act ("CLRA")**
15 **Cal. Civ. Code § 1770(a)(5), *et seq.***
16 **(On behalf of the California Subclass)**

17 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 71 of this complaint.

19 119. The CLRA prohibits twenty-seven enumerated unfair business practices.

20 120. Cal. Civ. Code section 1770(a)(5) of the CLRA prohibits representing that a
21 seller's goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits,
22 or quantities that they do not have.

23 121. Cal. Civ. Code section 1770(a)(7) of the CLRA prohibits representing that its
24 goods or services are of a particular standard, quality, or grade, if they are of another.

25 122. Cal. Civ. Code section 1770(a)(9) of the CLRA prohibits advertising goods and
26 services with the intent not to sell them as advertised.

27 123. Defendant violated Cal. Civ. Code sections 1770(a)(5) and 1770(a)(7) of the
CLRA by representing that the Products, were safe for consumption when, at the point of sale,

1 Defendant knew or should have known that the Products contained *Listeria monocytogenes*.

2 124. Defendant violated Cal. Civ. Code section 1770(a)(9) of the CLRA when it
3 advertised the Products as not containing *Listeria monocytogenes* with the intent not to sell them
4 as advertised.

5 125. As a result of this violation, in June and August 2024, Plaintiff incurred damages
6 in the form of purchasing purchased multiple Boar's Head meat sandwiches from his local
7 Holiday Markets in Weaverville, CA and Redding, CA, including at least one that contained Beef
8 Salami which was one of the Products involved in the recall. Plaintiff spent money on Products.
9 Plaintiff's Products lost all value as a result of contamination with *Listeria monocytogenes*.

10 126. As a result of this violation, Plaintiff and Class Members have been deprived of
11 the safely consumable food Products which Defendant represented they were purchasing. Had
12 Plaintiff and Class Members known the true nature of the Products, Plaintiff and Class Members
13 would have paid less for the Products, would have returned the Products during the respective
14 buyer's remorse periods, or would not have purchased the Products at all.

15 127. Under Cal Civ. Code section 1781(a), any consumer who suffers damage as a
16 result of a violation of this section may bring a class action on behalf of himself and all those
17 similarly situated.

18 128. On October 21, 2024, pursuant to Cal. Civ. Code section 1781(a)(1) and (2),
19 Plaintiff sent notice of the violation and demand for correction to Defendant's headquarters via
20 certified mail, return receipt requested.¹¹ Plaintiff reserves the right to amend their CLRA claim
21 to seek damages as allowed by law.

22 129. Plaintiff has no adequate remedy at law because he is currently unable to
23 determine whether he will be able to use the Products in the future, and he is uncertain whether
24 Defendant will attempt to fix the Recall or provide other remedies. Plaintiff was left with
25 uncertainty as to the best course of action after seeing the convoluted and deficient Recall. Unless
26 the Court enjoins further unlawful acts by Defendant, Plaintiff and Class Members face

27 ¹¹ Exhibit A.

1 uncertainty as to which of these choices would minimize their damage. Defendant benefitted
 2 substantially from Plaintiff's purchases because Defendant received the majority of the revenue
 3 from the purchase.

4 130. Therefore, Plaintiff and the Class are entitled to injunctive relief, actual damages,
 5 restitution, punitive damages, and all other relief that the court deems proper, including costs and
 6 attorney's fees, under Cal. Civ. Code section 1780.

7 **COUNT VI**

8 **Fraud By Omission**

9 **(On behalf of the Nationwide Class or, in the alternative, the California Subclass)**

10 131. Plaintiff incorporates by reference the allegations contained in paragraphs 1
 9 through 71 of this complaint.

11 132. Defendant failed to disclose material facts about the nature of the Products.
 12 Specifically, Defendant failed to disclose material facts about the presence of *Listeria*
 13 *monocytogenes* in the Products.

14 133. Because the technology that could detect *Listeria monocytogenes* was not
 15 available to the public and Defendant controlled the manufacturing and distribution of the
 16 Products, Plaintiff and Class Members had no reasonable means of knowing that Defendant's
 17 representations concerning the Products were incomplete, false, and misleading. Plaintiff and
 18 Class Members did not and reasonably could not have discovered Defendant's deceit before they
 19 purchased the Products or before the end of their buyer's remorse periods.

20 134. Defendant made material omissions regarding its business practice of selling
 21 Products contaminated with *Listeria monocytogenes* to coerce Plaintiff and Class members to
 22 buy the Products that are sold for substantial and unjustified premiums considering their true
 23 condition. Had Plaintiff and Class members known that Defendant employed such tactics, they
 24 would not have purchased the Products in the first place, would not have purchased it at the price
 25 they did, or would have returned it during their respective buyer's remorse periods.

26 135. Defendant had a duty to disclose the true nature of the Products to Plaintiff, Class
 27 Members, and the public because Defendant's conduct with respect to the Products results in

1 material and unreasonable damage to the property of Plaintiff and Class Members and Defendant
2 possessed exclusive knowledge of it.

3 136. Defendant knew, or in the exercise of reasonable diligence should have
4 known, that its representations and omissions were false and misleading at the time it made
5 them. Defendant deliberately provided false representations and omissions to prevent
6 customers from learning the contaminated nature of the Products and further inducing its
7 customers to purchase new Products.

8 137. The facts about the Products that Defendant suppressed and omitted were material
9 to a reasonable objective consumer, and Plaintiff and Class Members were unaware of them until
10 they had already purchased the Products. Had Defendant disclosed the true nature of the Products
11 on the labels or elsewhere, Plaintiff and Class Members would have been aware of it, and would
12 not have purchased the Products, would have paid substantially less for it, or would have returned
13 it for a refund.

14 138. When deciding to purchase the Products, Plaintiff and Class Members reasonably
15 relied to their detriment upon Defendant's material omissions regarding the Products.

16 139. Plaintiff and Class Members sustained damages as a direct and proximate result
17 of Defendant's deceit and fraudulent concealment. Among other damage, Plaintiff and Class
18 Members did not receive the value of the premium price they paid for the Products.

19 140. Defendant's fraudulent omission was malicious, oppressive, deliberate, intended
20 to defraud Plaintiff and Class Members and enrich Defendant, and in reckless disregard of
21 Plaintiff's and Class Members' rights, interests, and well-being. Defendant's conduct warrants
22 an assessment of punitive damages in an amount sufficient to deter such conduct, to be
23 determined according to proof.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, on behalf of himself and the Classes defined above,
26 respectfully requests that this Court:

27 A. Determine that the claims alleged herein may maintained as a class action under

1 Federal Rule of Civil Procedure 23, enter an order certifying the Classes defined above, and
2 appointing Plaintiff's counsel as Class Counsel and Plaintiff as the representative of the Class;

3 B. Enter an order declaring that Defendant's actions, as set out above, violate the
4 fraudulent, unfair, and unlawful prongs of the California Unfair Competition Law, Cal. Bus. &
5 Prof. Code section 17200.

6 C. Enter an order declaring that Defendant's actions, as set out above, violate Cal.
7 Civ. Code section 1770(a)(5) *et seq*;

8 D. Grant an injunction requiring Defendant to cease the unlawful business practices
9 described herein and otherwise protecting the interests of Plaintiff and the Class, including
10 requiring Defendant to disclose the true nature of the Products;

11 E. Award all actual, general, special, incidental, statutory, punitive, and
12 consequential damages to which Plaintiff and Class Members are entitled excluding any
13 derivative from Plaintiff's CLRA claim;

14 F. Award pre-judgment and post-judgment interest as provided by law;

15 G. To the extent an adequate remedy at law does not exist: (a) grant appropriate
16 equitable relief, including, without limitation, an order requiring Defendant to: (1) adequately
17 disclose the true nature of the Products; and (2) return to Plaintiff and Class Members all costs
18 attributable to remedying or replacing Products, including but not limited to economic losses
19 from the purchase of replacement products; (b) enjoin Defendant from making similar false
20 statements and omissions and/or using any of the other tactics described herein; and/or (c) grant
21 such other equitable relief to which Plaintiff and Class Members are entitled.

22 H. Award reasonable attorneys' fees and costs as permitted by law; and

23 I. Grant such other and further relief as the Court deems appropriate.

24 **DEMAND FOR JURY TRIAL**

25 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of
26 all issues triable as of right.

27 Date: October 21, 2024

Respectfully Submitted,

CLASS ACTION COMPLAINT

/s/ Michael F. Ram

Michael F. Ram

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